88-1468

Supreme Court, U.S.
FILED
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1989

DONALD V. JOHNSTONE, *Petitioner,*

v.

AMOCO OIL COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX

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March 6, 1989

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IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 87-2916

AMOCO OIL COMPANY,

Plaintiff-Appellee,

v.

DONALD V. JOHNSTONE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division.
No. 86 C 642-James E. Noland, Judge.

ARGUED MAY 19, 1988-DECIDED SEPTEMBER 14, 1988

Before Wood, Jr., Kanne, Circuit Judges, and Reynolds, Senior District Judge.*

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* The Honorable John W. Reynolds, of the Eastern District of Wisconsin, is sitting by designation.

Wood, Jr., Circuit Judge. The only issue is whether or not collateral estoppel, or issue preclusion, is applicable to this second lawsuit between the same parties.[1] In a bench trial the district judge held that it was.

Plaintiff Amoco Oil Company (Amoco) brought this suit seeking declaratory judgment that Amoco, under the Petroleum Marketing Practices Act (PMPA), had properly terminated or nonrenewed a lease with defendant Donald V. Johnstone as lessee of an Amoco station, known as the Nora Station, in Indianapolis, Indiana. Amoco further sought an order that defendant deliver possession of the station to plaintiff.

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[1] The district court found ample jurisdiction to hear the case under the Petroleum Marketing Practices Act, 15 U.S.C §2801-2841 (PMPA); the Declaratory Judgment Act, 28 U.S.C. §2201; and by reason of diversity, 28 U.S.C. §1332.

I. FACTUAL BACKGROUND

Plaintiff Amoco, a marketer of gasoline petroleum products, entered into two leases, and two Dealer Supply Agreements accompanied by Meter Marketing Plan riders (MMP) and other agreements, with defendant Johnstone involving two separate gasoline stations. One set of agreements involved the Nora Station and covered the period March 1, 1983 to February 28, 1986. The other set involved a separate gasoline station known as the Belle Meade Station. The present case involves primarily the Nora Station, and the Belle Meade Station only indirectly.

Prior to the present suit Johnstone, as plaintiff, in October 1984, had filed suit against Amoco as defendant in the same federal district, but before a different judge, Judge Dillin, alleging that certain provisions of the MMP riders attached to the supply agreements with respect to both the Nora Station and the Belle Meade Station violated the Indiana

Deceptive Franchise Practices Act. Johnstone sought to have the court declare those provisions invalid and to reform each of the MMP riders.

In November of 1985, Amoco by letter sought to terminate or nonrenew the lease and franchise relationship with the defendant regarding the Nora Station, effective when the lease expired in February, 1986. That letter, by which Amoco sought to comply with the requirements of the PMPA, stated that the company had determined that to renew the lease would be uneconomical for Amoco despite any reasonable changes in terms that might be acceptable to the defendant, a termination reason recognized under the Act. The letter also contained a Summary of Dealer Rights at Termination and Non-Renewal. In conformance with the Act, Amoco offered to sell the station to Johnstone for a given price and agreed to keep the offer open for ninety days. Offers and counteroffers followed during the original

time provided, and during an extension by Amoco, but did not culminate in a signed sales agreement. Johnstone tendered an earnest money check, but because he did not deliver signed sales documents, Amoco returned the check to him. These negotiations gave rise to Johnstone's unsuccessful contract counterclaim.[2]

The original claim filed by Johnstone against Amoco seeking to reform parts of their leasing arrangements was tried in May, 1986, and thereafter judgment was entered in favor of Amoco. Johnstone appealed, but in May, 1987, voluntarily dismissed his appeal. The proceedings in that case led Judge Noland in

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[2] Another issue before the district court was whether the parties had entered into a contact for the sale of the gas station in question by plaintiff, Amoco Oil Company, to defendant, Donald V. Johnstone. That issue was decided adversely to Johnstone on his counterclaim for specific performance, but he does not raise the issue on appeal.

this, the second case, also to enter judgment for Amoco on the basis of collateral estoppel, or issue preclusion. We must, therefore, examine Judge Dillin's findings and judgment in the first case to determine their effect on the second case.

In the first case Amoco, by amendment, raised its defense that the Dealer Supply Agreement and Meter Marketing Plan rider, which Johnstone, as plaintiff, had attached to his complaint relating to the Nora Station, had by their terms expired on February 28, 1986, prior to trial. Amoco further alleged that prior to that date Amoco had given Johnstone notice of its intent to terminate or nonrenew the leasing arrangements for the Nora Station which included documents by which Amoco proposed to sell the station to Johnstone, in accordance with the provisions of the PMPA. Amoco claimed in the first case that any issues involving the validity of the MMP for the Nora Station were therefore moot.

Judge Dillin agreed with Amoco, finding that the leasing arrangements for the Nora Station had expired, and that Amoco had given Johnstone notice of its intention to terminate or nonrenew the leasing arrangements in accordance with the PMPA.

II. ANALYSIS

In this court Johnstone claims that Judge Dillin's findings in the first case should not collaterally estop him from attempting to prove in defending this suit that Amoco had not in fact terminated its relationship with him in accordance with the PMPA. That issue, he argues, was not mooted by Judge Dillin's findings and order. We need, therefore, to briefly examine the doctrine of collateral estoppel and determine whether it is properly used as a bar in the present case.

Collateral estoppel, or issue preclusion, is not a mysterious doctrine. In essence it says that courts have enough to do without unnecessarily doing things twice, thereby

increasing the change for inconsistent results. In County of Cook v. Midcon Corp., we set forth the generally recognized principals:

> In general, collateral estoppel precludes relitigation of issues in a subsequent proceeding when (1) the party against whom the estoppel is asserted was a party to the prior adjudication, (2) the issues which form the basis of the estoppel were actually litigated and decided on the merits in the prior suit, (3) the resolution of the particular issues was necessary to the court's judgment, and (4) those issues are identical to issues raised in the subsequent suit.

773 F.2d 892, 898 (7th Cir. 1985).

Johnstone calls to our attention Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327-28, 331 (1979), which modifies the first listed criterion so that in some circumstances mutuality of parties is not necessary. In the present case, however, the mutuality of the parties is conceded.

In Frye v. United Steelworkers of America, 767 F.2d 1216, 1220-21 (7th Cir.), cert. denied, 474 U.S. 1007 (1985), this court

elaborated on the use of collateral estoppel, although in the context of administrative agency decisions. We held that an express finding of fact or law in an earlier judgment will have a preclusive effect if that finding was necessary and essential to the earlier judgment. Both parties cite Wickham Contracting Co. v. Board of Educ., 715 F.2d 21,28 (2d Cir. 1983), a case that states the same criteria in negative terms. The imposition of collateral estoppel in Wickham was held to be improper if the relevant factual finding was not critical and essential to the earlier case and therefore offered the parties little incentive to litigate.

The PMPA regulates the relationship between oil companies, such as Amoco, and their franchisees, such as Johnstone. It sets forth the substantive grounds which can justify a nonrenewal or termination of the franchise relationship and prescribes certain procedures and conditions for any termination or

nonrenewal.[3] In general, the oil company must give ninety days' notice of termination or nonrenewal, and extend to the franchisee a bona fide offer to sell during the notice period. Amoco, at least facially, met the substantive and procedural requirements by providing timely notice of termination or nonrenewal as a result of its determination, made in its normal course of business and in good faith, that renewal of the franchise would likely be uneconomical to Amoco, even considering any reasonable changes or additions to the franchise which might be acceptable to Johnstone. Amoco extended an offer to sell, which Johnstone did not accept.

Johnstone argues that the application of collateral estoppel unjustly denies him the opportunity to dispute Amoco's stated grounds for nonrenewal or termination, and the question of whether Amoco's offer to sell was bona fide. It is Johnstone's position that the district

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[3] 15 U.S.C. § 2802 (b)(3)(D)(i)(IV)

court in the first case did not hear evidence, nor otherwise consider the merits of Amoco's compliance with the PMPA for the Nora Station. Johnstone also argues that the case cannot be construed to suggest such an adjudication. "The findings of fact themselves," Johnstone argues, simply reiterate what is not disputed; that (a) the terms of franchise agreement between Amoco and Johnstone expired by their own terms on February 28, 1986; and (b) Amoco gave notice of its intention to terminate or nonrenew the relationship by way of its letter of November 18, 1985 in the manner required by the PMPA. Johnstone then argues that the findings were not enough because "[n]o finding of fact was made with regard to any factual issue necessary to determine if the notice of termination or nonrenewal was upon proper grounds or whether Amoco's offer to sell its interests in the premises to Johnstone was a "bona fide offer" as required by he [sic] PMPA."

In Frye, we considered an analogous situation and stated that

> [e]ven if there were other facts that could have been presented at [trial] the fact that they were not brought to the [court's] attention would not argue against application of collateral estoppel, as long as there had been an equal incentive to litigate the issue, and if there were no other factors making estoppel unjust.

767 F.2d at 1222.

It must be remembered that in the first suit between these parties Johnstone sued Amoco, seeking to reform certain aspects of their franchise arrangements. When the Nora Station lease expired by its own terms and bargaining in accordance with the PMPA produced no contract of sale, the Nora Station reverted to Amoco, and the controversy was over. Johnstone had no further legal interest in the Nora Station, and it would therefore be futile to try to reform a franchise that was no longer in existence. If Johnstone, as he claims, had valid defenses to any termination by Amoco the

first case provided him with the time and place to offer those defenses. The issue of the Nora Station franchise's viability was put in issue by Amoco. The court then found the station's status had been resolved and all was moot. There was little more that Judge Dillin could say about the matter if the defendant held back and did not deny mootness nor offer any of the defenses he now claims to have had to demonstrate that the case was not moot because the PMPA had not been properly complied with by Amoco.

It was up to Johnstone either to show why his claim was not moot or suffer the loss of that part of his own lawsuit as to the Nora Station. If he had for some reason been prevented from making his defense in that trial court he could have raised that issue on appeal. He did neither and voluntarily dismissed his appeal. We cannot now retry that part of Johnstone's first lawsuit in this second suit of Amoco. It appears that

Johnstone may have misperceived what was happening in the first suit and what its effect could be, but it should have been obvious. If Johnstone did not have the incentive to appeal the mootness issue vigorously in his own suit against Amoco, particularly when Amoco's suit against him was still pending, Amoco should not be penalized for Johnstone's lack or original incentive. The issue was critical both to his own case and in Amoco's case, cases that involved more than small or nominal damages. See Parklane Hosiery, 439 U.S. at 330. The incentive that now impels Johnstone to litigate the same issue with the same party comes too late.

The litigation of the first case developed in a relatively short period of time so as to require attention, thought, and action by Johnstone. If he thought the timing was prejudicial he should have so informed the court and sought an extension. If the court denied his motion, Johnstone would have had

another issue to raise in the appeal which he abandoned. Johnstone failed to make any unfairness argument in the district court in opposition to the court's application of collateral estoppel, an argument he raises here, but in any event we see no prejudice to Johnstone for which he was not responsible.

In our view all of the requirements for the application of collateral estoppel were met. The issue of the propriety of the termination or nonrenewal of the lease already had been adequately resolved. There was nothing left for Judge Noland to do except enter judgment for Amoco, which he did, and which we must affirm.

Each party shall bear his or its own costs.

AFFIRMED.

A true Copy:
Teste:

/s/
Clerk of the United States
Court of Appeals for the
Seventh Circuit

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

December 7, 1988

Before

Hon. Harlington Wood, Jr., Circuit Judge
Hon. Michael S. Kanne, Circuit Judge
Hon. John W. Reynolds, Senior District Judge

AMOCO OIL COMPANY, Plaintiff-Appellee,	) Appeal from the United States District Court for the
No. 87-2916 vs.	) Southern District of Indiana, Indianapolis
DONALD V. JOHNSTONE, Defendant-Appellant.	) Division. No. 86C642 James E. Noland, Jud.

The cause was heard on the Defendant-Appellant's Petition for Rehearing.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that said Petition be, and the same is hereby DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMOCO OIL COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO. IP86-642-C
	)	
DONALD V. JOHNSTONE,	)	
	)	
Defendant.	)	

ORDER

This cause came before the Court for trial on August 27, 1987. The Court, having heard the evidence presented and the arguments of counsel, and having found at the close of the trial that the law is with the plaintiff and against the defendant on both the plaintiff's complaint and the defendant's counterclaim, and having entered its Memorandum Decision herein, and being duly advised in the premises, now makes this written entry.

IT IS HEREBY ORDERED that judgment be entered in favor of the plaintiff on the plaintiff's complaint.

IT IS FURTHER ORDERED that judgment be entered in favor of the plaintiff on the defendant's counterclaim.

IT IS SO ORDERED.

DATED this 9th day of November, 1987.

James E. Noland,
U.S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMOCO OIL COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 86-642-C
	)	
DONALD V. JOHNSTONE,	)	
	)	
Defendant.	)	

MEMORANDUM DECISION

The plaintiff Amoco Oil Company brought this action seeking a declaratory judgment that the plaintiff Amoco had properly terminated and/or nonrenewed a lease with the defendant Donald V. Johnstone pertaining to an Amoco station, and requesting that the Court order the defendant Johnstone to deliver possession of the Amoco station to Amoco. Amoco alleges that it offered to sell its interest in the Amoco station to Johnstone, and that despite negotiations by both sides, no contract for sale of the station by Amoco to Johnstone was ever formed. Johnstone, on the other hand,

believed that a contract was formed. He was granted leave of court to amend his pleadings to include a counterclaim asking for specific performance directing Amoco to sell the station to Johnstone. Jurisdiction of the Court is found under the Petroleum Marketing Practices Act, 15 U.S.C. §2801 et seq. ("PMPA"); the Declaratory Judgment Act, 28 U.S.C §1332. Trial of this action was to the Court on August 27, 1987. This Memorandum Decision is entered in accordance with Rule 52(a) of the Federal Rules of Civil Procedure, which allows findings of fact and conclusions of law to appear in a memorandum of decision filed by the Court.

I.

The facts established by the evidence presented by the parties are as follows. Amoco leases certain real estate at 86th Street and Westfield Boulevard in the northeast corner of such intersection known as 8601 Westfield Boulevard, Indianapolis, Indiana. Amoco improved such location as an Amoco gasoline

service station and subleased such station to the defendant Johnstone pursuant to a written lease having a term from March 1, 1983 until February 28, 1986. Amoco's lease of the real estate will sometimes be referred to as the "Ground Lease" and the lease to Johnstone will sometimes be referred to as the "Dealer Lease." The Amoco service station located at 8601 Westfield Boulevard will be referred to as the "Amoco station."

Johnstone was represented in negotiations for the possible purchase by Johnstone of Amoco's interest in the Amoco station by his attorney, Christian B. Carisch ("Carisch"). Carisch negotiated with Amoco concerning the possible purchase by Johnstone of the Amoco station. Amoco's representative for negotiations concerning the station operated by Johnstone was one of its attorneys, Marguerite McDermed ("McDermed"). The subject of the negotiations included the sale of interests in real estate. By letter dated November 18,

1985, Amoco offered to sell to Johnstone its interest in the Amoco station and under the ground lease for approximately $112,000. Such offer originally required a written acceptance within 90 days, but the parties agreed to extend the time of such offer through March 31, 1986.

On March 24, 1986 Carisch had a conversation with McDermed in which he indicated that Johnstone was "interested" in purchasing Amoco's interest in the real estate for $68,000 together with the actual cost of refurbishing the underground storage tanks. At the time the parties did not agree on all the terms and conditions of the purchase of Amoco's interest in the real estate involved in the Amoco station. The unresolved items were:

a. The parties agreed on the amount of the earnest money deposit, $5,000.00, but never did agree upon the terms of an earnest money clause. The offer

of Amoco on November 18, 1985 did not include any requirement of earnest money, but the parties agreed to add this to the written documents.

b. Preparation by Amoco of closing documents and the review thereof by Carisch on behalf of Johnstone.

c. Whether the underground storage tanks at the Amoco station required refurbishment or whether such tanks would be removed.

Amoco in turn prepared closing documents and by cover letter of April 4, 1986 sent them to Carisch. The documents included a proposed "Real Estate Improvement Sales Contract" and a proposed "Assignment of Lease," which proposed to assign all of Amoco's right, title and interest in and to the Ground Lease to Johnstone.

In the April 4, 1986 letter from Amoco to Carisch, Amoco asked Johnstone's "intention"

with respect to a separate case in litigation between him and Amoco. Amoco commented that it seemed "appropriate at this time to dispose of this case. . . ."[1] None of the proposed closing documents sent by Amoco referred to this separate litigation, and Amoco did not state that a settlement of the separate litigation was any condition or requirement to any sale of its interest in the Amoco station to Johnstone.

The parties, through their representatives, further negotiated about the possible sale in a telephone conversation on April 25, 1986. Shortly before this telephone conference, Carisch learned of an appraisal of

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[1]The case to which Amoco made reference was determined to be an action styled "Donald V. Johnstone, Plaintiff v. Amoco Oil Company, Defendant, cause no. IP 84-1518-C," filed in this District Court. Judge Dillin entered his findings of fact and conclusions of law in that case on March 18, 1987, which was prior to the date of this trial. The effect of that judgment on this case will be discussed in section II herein.

Amoco's improvements on the real estate showing that the improvements of Amoco had a value of $33,000. In the conversation on April 25, 1986, Carisch indicated that his client, Johnstone, had changed his mind about purchasing Amoco's interest in the real estate for $68,000 together with the actual cost of refurbishing the underground storage tanks and offered, on behalf of Johnstone, to purchase Amoco's interest in the real estate for $33,000 plus the actual cost of refurbishing the tanks. In that April 25, 1986 conference, Carisch stated that he was not involved in the MMP case and had no authority to discuss it.

McDermed and Carisch negotiated further concerning the possible sale on April 28, 1986. At that time, Carisch indicated that he did have authority to discuss the MMP case and that Johnstone would dismiss the MMP case if the purchase price for the Amoco station were reduce by $7,000 or $8,000. Carisch, on behalf

of Johnstone, offered to dismiss the MMP case and to purchase Amoco's interest in the Amoco station for $25,000 plus the actual coast of refurbishing tanks. Carisch further offered that, if there were no dismissal of the MMP case, Johnstone again offered to purchase Amoco's interest in the Amoco station for $33,000 plus the actual cost of refurbishing the tanks, as he had done in the April 25, 1986 telephone conference. Such offers on behalf of Johnstone were rejected by McDermed, on behalf of Amoco.

By letter dated April 28, 1986, Carisch proposed two additions and/or changes in the Real Estate Improvement Sales Contract, one of the documents submitted by Amoco to Carisch with the April 4, 1986 letter. The first change involved the second paragraph of the Real Estate Improvement Sales Contract. By this proposed change, Carisch rejected the "Assignment of Lease" proposed by Amoco with its April 4, 1986 letter. The testimony is

undisputed that the terms of the assignment in the second paragraph as proposed by Carisch's letter of April 25 were never agreed upon.

The second change related to the terms and conditions of an earnest money clause. While the parties agreed on the amount of earnest money, $5,000, it is undisputed that the parties never did agree upon the terms of the earnest money clause proposed by Carisch in the April 28, 1986 letter.

By its letter of May 9, 1986 from Amoco to Johnstone, Amoco offered to sell on the basis of the documents submitted to Carisch on April 4, 1986. Acceptance of such offer required signing the sales contract submitted on April 4, 1986 and submission of the earnest money deposit of $5,000 on or before May 15, 1986. While Johnstone did submit an earnest money check on or before that date, Johnstone did not then and has never signed the Real Estate Improvement Sales Contract or any of the other documents proposed by Amoco in its letter of

April 4, 1986. The May 9, 1986 letter withdrew any consideration of the MMP litigation from the negotiations.

There was never an agreement reached between Amoco and Johnstone, through any offer made by Amoco, on all the essential terms and conditions of any contract for sale of Amoco's interest in the Amoco station.

Further, with regard to the Defendant's counterclaim, there was never an agreement reached between Amoco and Johnstone, through any offer made by Johnstone, on all the essential terms and conditions of any contract for sale of Amoco's interest in the Amoco station. In count I of Johnstone's counterclaim, paragraph 12, Johnstone alleges and admits that Johnstone made an offer to purchase Amoco's interest. In paragraph 13 of count I, Johnstone alleges that Amoco "accepted" this offer between March 26, 1986 and April 4, 1986. The evidence is without dispute that there were no written or oral

communications between Amoco and Johnstone or Carisch in that period of time so that Amoco could not have accepted such alleged offer of Johnstone during such time period. Johnstone does not contend that the April 4, 1986 letter was an acceptance of Johnstone's alleged counter-offer. In addition, Johnstone failed to prove any damages in connection with his counterclaim. The only evidence on the subject showed that, to acquire the interest of Amoco and the interest of the landowner at the site of the Amoco station would cost $175,000 to exercise the option and $112,000 to purchase Amoco's interest, for a total of $287,000. The evidence showed that Johnstone secured an appraisal which showed the fair market value of all interests in the subject property was $233,000, so that if Johnstone acquired all interest in the real estate, he would sustain a loss of approximately $54,000.

II.

A. Issue Preclusion

In the suit between these parties decided by Judge Dillin, Johnstone alleged that a franchise agreement provision, specifically a Meter Marketing Plan deposit provision, was void. Amoco contended that, with respect to the Amoco station on Westfield Boulevard, the relationship between Johnstone and Amoco at such station had been terminated or nonrenewed pursuant to the terms of the PMPA. Following the trial of such action, the Court entered a Final Judgment for Amoco and found that, with respect to the Amoco station at Westfield Boulevard, the issues as to the validity of the Meter Marketing Plan were moot, because the franchise relationship between Amoco and Johnstone at the Amoco station had been terminated or nonrenewed pursuant to the PMPA

and Amoco's letter of November 18, 1985.[2]

On the day this trial was held, on motion of the plaintiff, after hearing arguments of counsel and reviewing the record, the Court

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[2]In that case, the following findings of fact were made:

"1. On February 28, 1983, Amoco and Johnstone executed a Dealer Supply Agreement (DSA) and accompanying Meter Marketing Plan Rider (MMP) for each of two service stations."

"2. One such station is located at 8601 Westfield Boulevard, Indianapolis, Indiana, S.S. No. 10071-46 ("Nora Station"). The DSA and MMP for the Nora Station expired pursuant to the terms of the agreements on February 28, 1986."

"3. By letter dated November 15, 1985, Amoco gave Johnstone notice of its intention to terminate or nonrenew the parties' relationship with respect to the operation of the Nora Station in accordance with the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq."

In addition, the following conclusion of law was made:

"1. All issues involving the validity of the provisions of the Meter Marketing Plan (MMP) Rider for the Nora Station are moot."

ruled that under the doctrine of issue preclusion, also known as collateral estoppel, the parties were precluded and estopped from re-litigating the issue of whether Amoco properly terminated its relationship with Johnstone in accordance with the provisions of the PMPA.

Res judicata is a broad and sweeping term which includes two doctrines concerning the preclusion effect of a prior adjudication. The first doctrine is claim preclusion or true res judicata. It states that once a judgment is rendered, no further relief may be accorded the same parties on the same "claim" or "cause of action." The second doctrine is issue preclusion, also known as collateral estoppel. Such doctrine prevents the re-litigation of issues and facts actually adjudicated, and essential to the judgment, in a prior litigation between the same parties. Kaspar Wire Works, Inc. v. Leco Engineering & Mach., 575 F.2d 530, 535-536 (5th Cir. 1978), as cited

in Wright & Miller, Federal Practice & Procedure § 4402 (1981).

The United States Supreme Court has stated:

> The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel . . . . Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case . . . . [c]ollateral estoppel relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication. (Citation omitted.)

Allen v. McCurry, 449 U.S. 90, 94, 101 S. Ct. 411, 414-415, 66 L. Ed.2d 308 (1980). Further, the Seventh Circuit has ruled that the application of collateral estoppel requires four elements:

1. The party against whom the estoppel is asserted was a party to the prior adjudication.
2. The issues which form the basis of the estoppel were actually litigated and

decided on the merits.

3. The resolution of the particular issues was necessary to the court's judgment.

4. Those issues are identical to issues raised in the subsequent suit.

County of Cook v. Midcon Corp., 773 F.2d 892, 898-899 (7th Cir. 1985).

Using the above standards, this Court found that the parties in this case were precluded from re-litigating the issue of whether Amoco properly terminated its relationship with Johnstone regarding the Westfield station. The record indicates that a full and fair opportunity to litigate the issue existed in the prior described litigation, and that the issue was litigated and decided on the merits. The significance of the conclusion of law in the prior litigation is that the relationship between the parties had ended. This necessarily includes a determination, as stated in the findings of fact, that Amoco

properly terminated its association with Johnstone regarding the service station in question. Because the issue and the parties are identical, and because a decision on the merits which was essential to the judgment was rendered, this Court held as a matter of law that the parties to this suit were precluded from relitigating this issue.

B. Contract Analysis

Although Amoco and Johnstone negotiated about a possible sale, the parties never reached a written or oral agreement for the sale of Amoco's interest in the Amoco station to Johnstone. Johnstone did not accept any offer tendered by Amoco, and Amoco did not accept any offer tendered by Johnstone. Regarding the testimony of the witnesses Carisch and McDermed on the issues involved, the Court finds the testimony of McDermed to be more credible. This Court finds as a matter of law that because there was no acceptance of an offer and no agreement on the essential terms

involved in this negotiation, no contract was ever formed.

Further, the parties at all times contemplated that any sale of Amoco's interest in the Amoco station would be pursuant to written agreement signed by both parties. The Amoco offer of November 18, 1985 required an acceptance in writing. Carisch's letter of March 26, 1986 contemplated written documents which would be reviewed and signed by his client. Amoco's letter of April 4, 1986 sent proposed written documents for review by Carisch and signature for Johnstone. Carisch's letter of April 28, 1986 drafts proposed changes in the written agreements. Amoco's letter of May 9, 1986 required a signed agreement. The parties never completed the negotiation of written agreements and never signed any written agreements. Because the possible sale of Amoco's interest in the Amoco station involved the right to possession of the real estate, the right to use the buildings and

driveways, the ownership of improvements and fixtures, and an option to purchase the real estate, interests in the real estate were involved so that the Indiana Statute of Frauds was applicable. Even if the parties had reached an oral agreement as to the sale, such agreement would be unenforceable under the Indiana Statute of Frauds, I.C. §32-2-1-1.

Amoco has demonstrated that it is entitled to the relief prayed for in its complaint. Johnstone has failed to prove that he is entitled to specific performance or is otherwise entitled to damages. This Court holds that the law is with Amoco and against Johnstone on both the plaintiff's complaint and the defendant's counterclaim. Accordingly, judgment shall be entered for Amoco and against Johnstone on both the plaintiff's complaint and the defendant's counterclaim. The defendant shall be ordered to deliver possession of the Amoco station to Amoco.

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DONALD V. JOHNSTONE, Plaintiff,	)	
vs.	)	No. IP84-1518-C
AMOCO OIL COMPANY, Defendant.	)	

JUDGMENT

The Court having this day filed its findings of fact and conclusions of law in the above captioned matter in the following words and figures to-wit: now therefore

IT IS CONSIDERED AND ADJUDGED that plaintiff take nothing by his complaint and said complaint is hereby dismissed.

IT IS FURTHER CONSIDERED AND ADJUDGED that plaintiff pay the costs of this action.

Dated this 18th day of March, 1987.

/s/
S. Hugh Dillin, Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DONALD V. JOHNSTONE, Plaintiff,	)	
vs.	)	NO. IP84-1518-C
AMOCO OIL COMPANY, Defendant.	)	

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Heretofore, the Court heard the evidence in this case, and now being fully advised enters its findings of fact and conclusions of law as follows:

Findings of Fact

1. On February 28, 1983, Amoco Oil Company ("Amoco") and Donald V. Johnstone ("Johnstone") executed a Dealer Supply Agreement (DSA) and accompanying Meter Marketing Plan Rider (MMP) for each of two service stations.

2. One such station is located at 8601 Westfield Boulevard, Indianapolis, Indiana,

S.S. No. 10071-46 ("Nora Station"). The DSA and MMP for the Nora Station expired pursuant to the terms of the agreements on February 28, 1986.

3. By letter dated November 15, 1985, Amoco gave Johnstone notice of its intention to terminate or nonrenew the parties, relationship with respect to the operation of the Nora Station in accordance with the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq.

4. The second station is located at 9602 North Meridian Street, Indianapolis, Indiana, S.S. No. 10044-46 ("Belle Meade Station"). The DSA and MMP are still in effect as to it.

5. The DSA and MMP grant Johnstone the right to engage in the business of dispensing goods or services under a marketing plan or system prescribed in substantial part by Amoco.

6. The DSA and MMP set forth the parties' agreement with respect to Amoco's delivery and sale of petroleum products to

Johnstone and the manner in which Johnstone pays for the products delivered. The MMP allows Johnstone to defer payment for gasoline delivered by Amoco until after the product is pumped and sold to consumers. Under the MMP, Amoco delivers petroleum products into Johnstone's 28,000 gallon capacity storage tanks, and continues to own such products until Johnstone sells them to the public. Thereafter, at least once per week, Johnstone pays Amoco therefor.

7. For the benefit of deferred payment and to protect Amoco from nonpayment, Johnstone is required to make a security deposit with Amoco. The MMP provides that the amount of the security deposit may be increased or decreased at any time in consequence of changing values of the inventory upon ten day's prior written notice to Johnstone.

8. The security deposit for the Belle Meade Station, in the amount of $1,329.00, remained unchanged from November 4, 1977 to

December, 1983.

9. In December, 1983, Johnstone was notified that this security deposit was being increased to reflect the increased value of inventory in his possession. The other Amoco dealers in the Indianapolis area who were being supplied with products pursuant to an MMP were also advised that their security deposits were being adjusted in the same manner.

10. The increase in the security deposit was calculated by dividing the annual gallonage delivered to Johnstone by fifty-two, the number of weeks in a year, and the number of times Johnstone elected to transmit MMP reports and payments to Amoco per week. That figure was then multiplied by the average price of the product sold to Johnstone.

11. At the time the security amount was increased, Johnstone transmitted MMP reports and payments to Amoco once per week.

12. Under the formula, the increased deposit requested in December, 1983 based upon

one report and payment per week was $16,733.00. The amount could be decreased as follows:

2 reports per week - $8,366,50

3 reports per week - $5,577.66

4 reports per week - $4,183.25

5 reports per week - $3,346.60

13. The requested increase in the amount of the security deposit was made to reflect the increased value of the inventory of Johnstone's possession pursuant to the terms of the MMP, Paragraph 6.

14. Johnstone was given the option of continuing to received deliveries under the MMP without advance payment for Amoco product by depositing the appropriate increased amount for security according to this choice of reporting periods per week. He also had the option of purchasing product under the direct delivery plan which provides for payment on a cash-on-delivery basis, eliminating the requirement of any security deposit.

15. Johnstone had the financial ability to pay the requested amount of $16,733.00, based on one report per week. Johnstone's election to transmit reports and payments more frequently or to purchase product under the direct delivery plan would not have significantly impaired the operation of the service station.

Conclusions of Law

1. All issues involving the validity of the provisions of the Meter Market Plan (MMP) Rider for the Nora Station are moot.

2. The security deposit provision of the Meter Marketing Plan (MMP) Rider does not violate Ind. Code § 23-2-2.7-1(3).

3. The MMP Rider is itself an agreement in writing, signed by Johnstone, agreeing that the amount of the MMP deposit may be changed in accordance with the standards specified in Paragraph 6 of the MMP Rider. So long as the security deposit is changed in accordance with

such standards, Amoco has the same right to make such changes as it has the right to change the price of its products as set out in the DSA.

4. Plaintiff does not allege or contend that the December, 1983 increase in the MMP deposit was a breach of the MMP Rider, but contends solely that Paragraph 6 of the MMP Rider is invalid under the Indiana Deceptive Franchise Practices Act, Ind. Code § 23-2-2.7-1(3). We hold to the contrary.

5. Even if the provision were to be construed as allowing a unilateral modification, the provision does not allow a substantial modification of the parties' agreement in violation of Ind. Code §23-2-2.7-1(3), because:

(a) The increase in the security deposit was not a discriminatory modification that significantly hindered Johnstone's ability to compete; and

(b) The increase in security deposit did not substantially impair Johnstone's ability to operate his business.

6. Judgment will be entered in accordance herewith.

Dated this 18th day of March, 1987.

/s/
S. Hugh Dillin, Judge